



## CALIFORNIA STATE PERSONNEL BOARD

801 Capitol Mall • Sacramento, CA 95814

### NOTICE OF EFFECTIVE DATE OF REGULATIONS

DATE: May 10, 1999

TO: ALL STATE AGENCIES AND EMPLOYEE ORGANIZATIONS  
ALL CHIEFS OF ADMINISTRATIVE SERVICES, CONTRACTING  
OFFICERS, PERSONNEL OFFICERS, AND CHIEF  
COUNSELS

SUBJECT: Regulations on Personal Services Contracts Effective May 3, 1999

On May 3, 1999, the State Personnel Board's (Board) regulations governing Board review of personal services contracts became effective. A copy of the final regulations is attached hereto. These final regulations can be found in the California Code of Regulations, Title 2, §§ 547.60 – 547.68. These regulations apply to all personal services contracts entered into by state agencies and departments on or after May 3, 1999.

In summary, for personal services contracts justified under Government Code § 19130(b), the regulations provide as follows:

- When a state agency or department first seeks contract approval from the Department of General Services (DGS) it must file a written justification with DGS that includes specific and detailed factual information that demonstrates that the contract meets one or more of the conditions set forth in Government Code § 19130(b).
- If an employee organization wishes to challenge a department's justification for a contract, it must send a request for review to the Board and serve it upon the department. That review request will have to include specific and detailed factual information and supporting evidence and declarations that show why it believes that the contract is not justified under Government Code § 19130(b).
- Within 7 days after receiving the employee organization's request for review, the department must serve a copy of that request upon the

contractor to the disputed contract. If the contractor wishes, it may request intervention as a party in the Board's contract review proceedings.

- Within 15 days after receiving the employee organization's review request, the department must file with the Board and serve upon the employee organization its response to the employee organization's request for review. The department's response must include a copy of the contract, specific and detailed factual information that demonstrates that the contract complies with Government Code § 19130(b), and supporting evidence and declarations.
- Within 5 days after receiving the agency's response, the employee organization may file with the Board and service upon the department a reply to that response.
- If an employee organization shows good cause for an evidentiary hearing, the matter may be sent to a Board Administrative Law Judge (ALJ) for an evidentiary hearing. If the employee organization does not show good cause, the review will proceed as an investigation conducted by Board staff.
- Within 30 days after receiving the contract, the Board's Executive Officer will either issue a written decision approving or disapproving the contract, or refer the matter for an evidentiary hearing before a Board ALJ.
- Any party may appeal the Executive Officer's decision approving or disapproving the contract to the full Board within 30 days after issuance. The Board will rely upon the agency's justification and response and the employee organization's request for review and reply when it decides the appeal; it will not accept additional factual information, although it may request briefs that explain the parties' respective positions and oral argument. The Board will issue a written decision approving or disapproving the contract.
- The Board's decision will be sent to all parties and posted on the Internet.
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Questions regarding these regulations should be directed to either Jerry Donel at (916) 653-1717 or John Jackson, (916) 653-1339, in our Personnel Resources and Innovations Division or Karen Brandt, in our Legal Office, at (916) 653-1403 or TDD (916) 653-1498.

LAURA M. AGUILERA, Chief  
Personnel Resources and  
Innovations Division

Attachment: Text of Regulations

**State Personnel Board  
Regulations Governing Board Review of Personal Services Contracts**

All new text intended for printing is indicated by underline.

**Title 2. ADMINISTRATION**

**Division 1. Administrative Personnel  
Chapter 1. State Personnel Board  
Subchapter 1.5. Personal Services Contracts**

**Article 1. Procedures for Reviewing Personal Services Contracts  
Proposed or Entered into Pursuant to Government Code §19130(b).**

**§ 547.60. Standard and Control for Approval of Contracts.**

When a state agency requests approval from the Department of General Services for a contract let under Government Code §19130(b), the agency shall include with its contract transmittal a written justification that includes specific and detailed factual information that demonstrates how the contract meets one or more of the conditions specified in Government Code §19130(b).

Note: Authority cited: Section 10337(a), Public Contract Code; and Section 18701, Government Code. Reference: Section 19130, Government Code.

**§ 547.61. Employee Organization's Request for Review.**

(a) Any employee organization that represents state employees may request that the board review a contract proposed or executed by a state agency pursuant to Government Code §19130(b) by filing with the board and serving upon the state agency a written request for review. The employee organization's request for review shall identify the contract to be reviewed and include the following:

(1) specific and detailed factual information that demonstrates how the contract fails to meet the conditions specified in Government Code §19130(b); and

(2) documentary evidence and/or declarations in support of the employee organization's position.

(b) The employee organization shall file a proof of service with the board that states when and how it served a copy of its request for review upon the state agency.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 19130 and 19132, Government Code; and Section 10337, Public Contract Code.

**§ 547.62. State Agency's Response.**

Within 7 days after the state agency receives a copy of the employee organization's request for review, the state agency shall serve a copy of that

request upon the contractor(s) to the disputed contract. Within 15 days after the state agency receives a copy of the employee organization's request for review, the state agency shall file with the board and serve upon the employee organization:

(a) a copy of the proposed or executed contract; and  
(b) the state agency's written response to the employee organization's request for review, which shall include:

(1) specific and detailed factual information that demonstrates how the contract meets one or more of the conditions specified in Government Code §19130(b); and

(2) documentary evidence and/or declarations in support of the state agency's position.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 19130 and 19132, Government Code; and Section 10337, Public Contract Code.

#### **§ 547.63. Employee Organization's Reply.**

Within 5 days after it receives from the state agency a copy of the contract and the state agency's response, an employee organization may file with the board and serve upon the state agency a written reply to the state agency's response.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 19130-and 19132, Government Code; and Section 10337, Public Contract Code

### **Article 2. Supplemental Procedures for Reviewing Personal Services Contracts under either Government Code §19130(a) or §19130(b).**

#### **§ 547.64. Executive Officer Decision.**

Within 30 days after receiving a copy of the proposed or executed contract, the executive officer shall do one of the following:

(a) If the employee organization has shown that good cause exists for referring the disputed contract for a hearing for the purpose of taking evidence and hearing arguments, the executive officer, in accordance with §547.65, shall refer the matter to an administrative law judge or other authorized representative of the board to conduct an evidentiary hearing and submit a proposed decision; or

(b) If the employee organization has not shown that good cause exists for referring the disputed contract for a hearing for the purpose of taking evidence and hearing arguments, the executive officer shall issue a written decision either approving or disapproving the contract and explaining the reasons for the decision. The executive officer shall promptly give notice of his decision to all parties.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 19130, 19131 and 19132, Government Code; and Section 10337, Public Contract Code.

**§ 547.65. Evidentiary Hearing.**

(a) Request for a Board Hearing. The employee organization may request that, in lieu of the executive officer making a decision approving or disapproving the disputed contract, the disputed contract be referred to the board for a hearing. To make such a request, the employee organization shall include with its request for review-written arguments, evidence, and/or declarations that show good cause exists for scheduling a hearing for the purpose of receiving evidence and hearing arguments concerning the propriety of the disputed contract.

(b) Good Cause. In order to show that good cause exists for referring the disputed contract for a hearing for the purpose of taking evidence and hearing arguments, the employee organization must show that there are disputed issues of material fact regarding the contract that must be resolved before a determination is made as to whether the disputed contract meets the criteria of Government Code §19130 and that an evidentiary hearing is necessary to resolve these disputed issues of material fact.

(c) Executive Officer Determination. The determination as to whether the employee organization has shown that good cause exists for referring the disputed contract for an evidentiary hearing shall be made by the executive officer. If the executive officer determines that good cause does not exist for referring the disputed contract for an evidentiary hearing, the contract review process shall proceed as an investigation, and the executive officer shall issue a decision approving or disapproving the contract.

(d) Conduct of an Evidentiary Hearing. Upon finding that the employee organization has shown good cause for referring the disputed contract for an evidentiary hearing, the executive officer shall refer the contract to an administrative law judge or other authorized representative of the board to conduct an evidentiary hearing and submit a proposed decision to the board in accordance with the procedures set forth in Government Code, Title 2, Division 5, Part 2, Chapter 2, Article 2 (commencing with §18670) and Chapter 7, Article 1 (commencing with §19570), and the board regulations promulgated thereunder.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 19130, 19131 and 19132, Government Code; and Section 10337, Public Contract Code.

**Article 3. Procedures for Appealing an Executive Officer's Decision Approving or Disapproving a Contract under Government Code §19130(a) or §19130(b) to the Board.**

**§ 547.66. Appeal from an Executive Officer's Decision.**

Any party may appeal the executive officer's decision to the board by filing a written request with the board within 30 days after issuance of the executive officer's decision. (See § 547.64(b).) Upon receipt of a timely appeal, the executive officer shall schedule the matter for briefing and oral arguments before the board. The board will decide the appeal upon the factual information, documentary evidence, and declarations submitted to the executive officer before he or she issued his or her decision. Upon the objection of a party, the board will not accept additional factual information, documentary evidence, or declarations that were not previously filed with the executive officer if the board finds that the submission of this additional factual information, documentary evidence, or declarations would be unduly prejudicial to the objecting party.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 18654.5, 18670, 19130, 19131 and 19132, Government Code; and Section 10337, Public Contract Code.

**Article 4. Procedures that Apply to Review Proceedings for Contracts Executed under either Government Code § 19130(a) or § 19130(b).**

**§ 547.67. General Procedures**

(a) Continuances and Extensions. The executive officer may grant continuances of oral arguments before the board and extensions of time for briefs or other documents for those oral arguments upon the consent of all parties or for good cause shown.

(b) Filing. Requests for review, agency responses, briefs, and other documents may be filed with the board by facsimile sent to the chief counsel's office. A document will be considered filed with the board when the board actually receives it.

(c) Service. Requests for review, agency responses, briefs and other documents shall be served upon all other parties by personal delivery, facsimile, telecopy, express mail or other means designed to ensure that they are received by the other parties on the same day they are filed with the board.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 18670, 19130, 19131 and 19132, Government Code; and Section 10337, Public Contract Code.

**§ 547.68. Intervention.**

(a) At any time after an employee organization requests that the board review a contract for compliance with Government Code §19130(a) or §19130(b), a contractor to the disputed contract may move to intervene as a party in the contract review process. Either the executive officer, administrative law judge or authorized representative who conducts an evidentiary hearing, or board, may grant a motion for intervention if all the following conditions are satisfied:

(1) A written motion is filed with the board, with copies served upon the state agency and the employee organization.

(2) The motion is made as early as practicable.

(3) The motion states facts demonstrating that the applicant has an interest in the disputed contract that may be affected by a decision upon that contract or that the applicant qualifies as an intervenor under a statute or regulation.

(4) The executive officer, administrative law judge, authorized representative or board determines that the interests of justice and the orderly and prompt conduct of the contract review process will not be impaired by allowing the intervention.

(b) If an applicant qualifies for intervention, the executive officer, administrative law judge, authorized representative or board may impose conditions

on the intervenor's participation in the contract review process, either at the time that intervention is granted or at a subsequent time. Conditions include, but are not limited to, the following:

(1) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the motion.

(2) Limiting or excluding the intervenor's participation in any proceedings so as to promote the orderly and prompt conduct of the executive officer's investigation, the administrative law judge's or authorized representative's evidentiary hearing, or the oral arguments before the board.

(3) Requiring two or more intervenors to combine their presentations of evidence and arguments, and other participation during the executive officer's investigation, the administrative law judge's or authorized representative's evidentiary hearing, or oral arguments before the board.

(4) Limiting or excluding the intervenor's participation in settlement negotiations.

(c) As early as practicable in advance of the executive officer's investigation, the administrative law judge's or authorized representative's evidentiary hearing, or oral arguments before the board, the executive officer, administrative law judge, authorized representative or board shall issue an order granting or denying the motion for intervention, specifying any conditions, and briefly stating the reasons for the order. The executive officer, administrative law judge, authorized representative or board may modify the order at any time, stating the reasons for the modification. The executive officer, administrative law judge, authorized representative or board shall promptly give notice of an order granting, denying, or modifying intervention to the applicant and to all parties.

(d) Whether the interests of justice and the orderly and prompt conduct of the contract review process shall be impaired by allowing intervention is a determination to be made in the sole discretion, and based on the knowledge and judgment at that time, of the executive officer, administrative law judge, authorized representative or board. The determination is not subject to administrative or judicial review.

(e) If a contractor's motion for intervention is denied, the executive officer, administrative law judge, authorized representative or board may permit that contractor to submit written arguments and participate in the executive officer's investigation, the evidentiary hearing before the administrative law judge or authorized representative, or oral arguments before the board as the executive officer, administrative law judge, authorized representative or board may deem appropriate under the circumstances.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 11440.50, 19130, 19131 and 19132, Government Code; and Section 10337, Public Contract Code.

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